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September 12, 2016

Via ECF

Hon. Gary L. Sharpe
USDC - NDNY
James T. Foley U.S. Courthouse
445 Broadway, Room 112
Albany, NY 12207

Re: Oral Nicholas Hillary v. The Village of Potsdam, et al.
USDC-NDNY Case No.: 7: 12-cv-01669 (GLS/DEP)
Our File No.: 213.014

Dear Judge Sharpe:

I represent the defendants in the above noted case. Mr. Hillary's murder trial is now underway in St. Lawrence County Court before Hon. Felix Catena. In accordance with the discovery Confidentiality Stipulation and Order of May 21, 2013 (Dkt. 13) my office provided to Mr. Hillary's attorney the homicide investigation file in discovery responses on or about June 21, 2013 and we declared those materials "Confidential" in accordance with the discovery Confidentiality Stipulation and Order. In light of the trial now proceeding, we are hereby removing the "Confidential" designation as to those materials.

In addition, as part of the summary judgment motion we filed on or about March 31, 2014, we attached portions of the investigative file materials and deposition testimony taken in the course of the civil case. We filed a request for the motion papers and exhibits to be maintained under seal with the court, which request was granted. Mr. Hillary filed requests to unseal the motion papers (Dkt. 66, 69, 73 and 79) which requests were previously denied (Dkt. 84). Defendant, Mark Murray (formerly Lieutenant/Detective with the Potsdam Police Department and now Chief), Lt. Michael Ames (formerly Sgt.) and Potsdam Police Officer Mark Wentworth, and members of the New York State Police, among others, are on the witness list for the prosecution and expected to testify in the criminal trial about the investigation in addition to many other witnesses who gave supporting depositions in the criminal investigation and also non-party depositions in the civil case, including Garrett's mother and other family members. I have also been asked to testify for the prosecution given I took sworn testimony from Mr. Hillary on April 20, 2012 (NYS GML 50-h examination) and January 20, 2014 (videotaped deposition).

The investigation regarding the murder of Garrett Phillips will be discussed publicly in open court by prosecutors and witnesses and even presumably Mr. Hillary's criminal defense counsel during the course of the criminal trial now underway. Opening arguments are being streamed on the internet. Portions of the video deposition testimony

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of Mr. Hillary in the civil case will be presented and possibly portions of his 50-h testimony, the transcript of which was filed in prior discovery motions.

Mr. Hillary obviously sued one of police agencies investigating the death of Garrett Phillips (i.e. Potsdam Police Department) and Chief Murray and former Chief Tischler (also a named defendant) were present for Mr. Hillary's deposition. As well, the discovery Confidentiality Stipulation and Order expressly stated that “[i]t is agreed that this Stipulation and Order does not restrict dissemination of materials, documents, testimony or information generated in the investigation of the death of Garrett Phillips, the course of the Notice of Claim, or this action as between law enforcement and/or prosecutorial agencies involved in the ongoing investigation of the death of Garrett Phillips.”

There have been innumerable news articles since Mr. Hillary's initial indictment in May 2014 discussing the investigative file materials in detail, attaching copies of certain of these materials and quoting portions of the defendants' deposition testimony in this case that were selectively leaked to the press for these stories, some of which were discussed in our motion (Dkt. 88 filed 8/7/16). More recently there was an extensive front page Sunday New York Times article March 6, 2016 and follow-up article July 24, 2016 as well as in the Watertown Daily Times on August 19, 2016 which articles included many details from the investigative file including an audio recording directly from the file materials. Mr. Hillary and his civil attorneys also gave a lengthy interview on “Darkness Radio” in excess of an hour on July 28, 2015, among others, which I recently came across in which the investigative file materials and selected deposition testimony of the defendants was discussed in detail.

In light of the above and as we have withdrawn the confidentiality designation regarding the investigative file, we further withdraw our request for the summary judgment motion papers and exhibits to remain sealed as the basis for both the confidentiality and sealing request are now moot and the very same facts and testimony is being presented publicly in open court. .

I thank you for your kind attention to this matter.

Respectfully yours,

BURKE, SCOLAMIERO, MORTATI & HURD, LLP

By: _____/S/_____

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